IN THE SUPREME COURT OF THE STATE OF VERMONT
Docket No. 2019-388

State of Vermont,
Appellee

v.

Phillip Walker-Brazie & Brandi Lena-Butterfield,
Appellants

Appeal from Vermont Superior Court, Criminal Division, Orleans Unit
Docket Nos. 555-9-18 Oscr, 558-9-18 Oscr

Reply Brief of the Appellants

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

ARGUMENT

I. Appellee's Proposed Test Is Unjustified, Unheard-of, Unprincipled, and Unworkable

Appellee asks the Court to adopt an ambiguous and unpredictable test that lacks any legal justification, relevant analog, or principled basis. Specifically, Appellee encourages the Court to carve out an undefined but limited space south of the international border in which Vermont's exclusionary rule would not apply in Vermont courts to evidence seized by Customs and Border Protection ("CBP") agents in a manner violative of Article 11. *See* Appellee's Br. 31 ("The State does not argue for the admission of evidenced seized . . . by the Border Patrol 'throughout Vermont,' but only in the limited circumstances of a stop conducted at the shadow of the border . . . ."); *see also id.* at 30 ("Article 11 would justifiably be applied to searches by Border Patrol agents that do not take place in the immediate vicinity of the border or, as the trial court put it, in the shadow of the border."); *id.* at 28.

Appellee makes no effort to, because it cannot, justify its creation of three constitutionally distinct zones: (1) the border and its equivalents, where courts have held that routine customs searches by CBP require neither reasonable suspicion nor probable cause; (2) the "shadow of the border," where CBP needs reasonable suspicion to stop a vehicle and probable cause to search it, but where Vermont's independent constitutional protections will not apply in Vermont courts; and (3) beyond the shadow of the border, where Article 11 would apply in Vermont courts to evidence seized by CBP. Appellee's scheme is an unsupported fabrication—it simply does not exist in Vermont or federal jurisprudence. Federal and state courts recognize only one relevant distinction where rights apply differently: federal law enforcement activities occurring at

the border or its functional equivalents versus those occurring everywhere else. *See United States v. Villamonte-Marquez*, 462 U.S. 579, 592–93 (1983) ("Random stops without any articulable suspicion of vehicles away from the border are not permissible under the Fourth Amendment, but stops at fixed checkpoints or at roadblocks are." (citations omitted)); *see also Almeida-Sanchez v. United States*, 413 U.S. 266, 272-73 (1973); Amicus Brief of Office of the Defender General 15-16 [hereinafter ODG Br.]; Amicus Brief of the Attorney General 11 n.6 [hereinafter AG Br.]. CBP has long recognized the same distinction. *See I.N.S. v. Delgado*, 466 U.S. 210, 225 n.1 (1984) (Brennan, J., concurring in part and dissenting in part) ("The enforcement activities of the INS are divided between 'border patrol' operations conducted along the border and its functional equivalents and 'area control' operations conducted in the interior of the United States."). Courts do not recognize a distinction between activities, like CBP roving patrols, when they occur near the border versus not near the border. Appellee's rule is legally baseless.

Additionally, Appellee's rule would weaken the Article 11 rights of thousands of Vermonters who live, work, and travel in this nebulous "shadow of the border." While conspicuously refusing to demarcate where the shadow of the border ends, Appellee believes the location of the vehicle search here is within it. Appellee's Br. 28-29. Even assuming the search's location marks the shadow's outer limit, the latitude of the search's location[1] is south of the following downtown areas: Canaan, Derby Line,

[1]CBP searched Ms. Lena-Butterfield's vehicle approximately two miles west of the intersection of North Jay Road and VT-105. P.C. 122, 133. According to Google Maps, this point is 1.95 miles directly south of the border. Appendix 002. Appellants ask that the Court take judicial notice of the maps, distances, and GPS coordinates provided herein. *See Fine Foods, Inc. v. Dahlin*, 147 Vt. 599, 604-05, 523 A.2d 1228, 1231 (1986) (agreeing courts can take judicial notice of distance between locations when it can be "accurately determine[d] from unquestionable sources"); *Pahls v. Thoms*, 718 F.3d 1210, 1216 n.1 (10th Cir. 2013) (collecting cases taking judicial notice of Google Maps because its accuracy cannot be reasonably questioned).

Richford, North Troy, and Franklin.[2] At this line, the "shadow" would also include parts of Alburgh, Newport, Highgate, Berkshire, Jay, Troy, Derby, Holland, Norton, and Averill. *See* Appendix 009. Appellee's rule creates an area of limited constitutional rights within Vermont, distinct from Vermont land south of the "shadow"—a plainly absurd result. *State v. Lohr*, 2020 VT 41, ¶ 7, 236 A.3d 1277 (Vermont Supreme Court "avoid[s] [constitutional] interpretations that lead to absurd results").

Lacking any legal or logical basis, Appellee neither does nor can provide any limiting principle or workable test for determining what land falls within its undefined "shadow of the border" region.[3] In the absence of any way to draw a principled line, Appellee effectively places virtually all of Vermont within CBP's presupposed authority to patrol within "100 air miles from any external boundary of the United States." 8 C.F.R. § 287.1(a)-(b); *see* Appellants' Br. 7; ODG Br. 7, 23-24. As Amici note, CBP conducts roving patrol seizures and searches of persons, personal vehicles, and public transportation in areas near and far from the border. Amicus Brief of Migrant Justice 8-9 [hereinafter MJ Br.]; ODG Br. 23-24. Therefore, Appellee's rule, in practice, would weaken Vermonters' innate Article 11 rights across the entire state, threatening state sovereignty, this Court's Article 11 precedent, and the predictability and fairness

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[2] According to Google Maps, the GPS latitude coordinate of the search location is 44.980359. Appendix 003. The listed downtowns are north of that point and therefore have a higher GPS latitude value. The GPS latitude coordinate for the center of these downtowns is: 44.996378 (Canaan), 45.002945 (Derby Line), 44.996970 (Richford), 44.995763 (North Troy), and 44.982008 (Franklin). Appendix 004-008.

[3] Note the breadth of Appellee's argument, which also fails to provide a principled justification for why its rule is limited to CBP stops and searches, raising the possibility that state prosecutors can profit from searches by any federal officer anywhere in Vermont, regardless of Article 11's requirements. Similarly, Appellee warns of the specter of suppression of evidence documenting even "serious and dangerous offenses," but the alleged offenses at issue here are neither: Appellants allegedly possessed personal-use quantities of marijuana and psilocybin mushrooms. Appellee does not—and cannot, if it is to prevail under these facts—offer a distinction between the extent of constitutional protection afforded dangerous offenses versus other, less serious ones.

Vermonters expect from their courts. Appellants' rule accomplishes the opposite. *See* Appellants' Br. 13-18, 22-27. The "shadow of the border" is a legally meaningless phrase; there is no liminal jurisdiction between Vermont and the international border. The search here occurred within Vermont.[4]

Consequently, the Court must determine an analysis that properly situates state constitutional guarantees and interests in "reverse silver platter" scenarios.[5] As noted in Appellants' opening brief, and unaddressed in Appellee's brief, the "exclusionary rule analysis" enjoys the most widespread support among courts and scholars, Appellants' Br. 14, because it centers state constitutions—ensuring "the state's constitutional goals will not [] be compromised," *State v. Mollica*, 554 A.2d 1315, 1328 (N.J. 1989). It is well established, predictable, and consistent with Vermont's constitution. Appellants' Br. 13-18. Here, that analysis requires suppression because the "overriding function" of Vermont's exclusionary rule is to protect individual rights, and Article 11 rights are personally held by the Appellants, not conferred. *See* Appellants' Br. 18-29. Article 11 should apply to evidence seized in Vermont and introduced in Vermont courts.

[4] Appellee admits that the search occurred in a location of "concurrent jurisdiction within Vermont," Appellee's Br. 26, "not . . . at the border or its functional equivalent" and that "[n]o one is arguing that it did," *id*. at 12. Even so, Appellee suggests that courts differ on whether the reverse silver platter doctrine is applicable to border searches. *Id*. at 27. Any potential difference is inconsequential here because the search was not a border search.

[5] Appellee is wrong to claim this case is otherwise. *See* Appellee's Br. 25-26. The "reverse silver platter" doctrine was coined to describe this exact situation, Appellants' Br. 11-12, and the framework is used in multiple permutations, *see id*. at 13 (listing "reverse silver platter" cases). Moreover, as detailed in Part II, *infra*, CBP lacks exclusive authority when acting away from the border or functional equivalents—preventing any distinction between this case and other federal-state "reverse silver platter" fact-patterns.

II. *State v. Coburn* and *State v. Rennis* Are Border Search Cases, This Case Is Not

Appellee misinterprets *State v. Coburn*, 165 Vt. 318, 683 A.2d 1343 (1996), and *State v. Rennis*, 2014 VT 8, 195 Vt. 492, 90 A.3d 906, to argue they control this case, but a plain and contextual reading requires the opposite conclusion.[6] As Appellee repeatedly quotes, "[t]he key holding of *Coburn* is that 'the Vermont Constitution does not apply to the conduct of federal government officials acting under the exclusive authority to safeguard the borders of the United States.'" *Rennis*, 2014 VT 8, ¶ 9 (quoting *Coburn*, 165 Vt. at 325, 683 A.2d at 1347); *see* Appellee's Br. 6, 7, 9, 11, 13, 24. A plain reading of that holding is that Article 11 does not apply to CBP searches *at the border or functional equivalent*. The language is explicitly about safeguarding "the *borders* of the United States." *Coburn*, 165 Vt at 325, 683 A.2d at 1347 (emphasis added). It says nothing about safeguarding areas *near* the border. *Coburn* also explicitly states that, "[w]ith respect to safeguarding the United States *border or its functional equivalent* . . . the federal interest is preeminent." *Id*. (emphasis added). *Rennis* "add[s] to *Coburn*'s holding now only to note that the '*functional equivalent*' *of the U.S. border* generally includes immigration checkpoints." 2014 VT 8, ¶ 10 (emphasis added) (internal quotation marks omitted). By their terms, these holdings control searches only at the border or functional equivalents.

[6] Appellee repeatedly misconstrues Appellants' arguments as an "invitation to overrule" *Coburn* and *Rennis*. Appellants do nothing of the sort because this case is materially distinct. Appellants' Br. 29-32. Regardless, *Coburn*'s interest-based analysis would require ruling in Appellants' favor. *Id*. at 33-34. And, as noted by Amicus Attorney General, applying Article 11 here "would not necessarily have required a different result in *Coburn*" because this Court has already found routine border searches are per se reasonable. *Coburn*, 165 Vt. at 321, 683 A.2d at 1345; AG Br. 11 n.6 (citing *State v. Lawrence*, 2003 VT 68, ¶ 12, 175 Vt. 600, 834 A.2d 10).

Furthermore, the border and its functional equivalents are the *only* places where CBP can act "under *the exclusive authority* to safeguard the borders." *Coburn*, 165 Vt. at 325, 683 A.2d at 1347 (emphasis added). Appellee fundamentally misunderstands *Coburn*'s holding to signify that CBP has exclusive authority over *acting* to safeguard the border, regardless of where it acts. This is manifestly untrue. Exclusive federal authority to control the border comes from the Foreign Commerce Clause. *Id*. (citing U.S. Const. art. I, § 8, cl. 3.) The power is plenary and precludes states from acting. *See United States v. 12 200-Foot Reels of Super 8mm. Film*, 413 U.S. 123, 126 (1973); *Japan Line, Ltd. v. L.A. County*, 441 U.S. 434, 453-54 (1979) (state action that "prevents the Federal Government from 'speaking with one voice' in international trade . . . is inconsistent with Congress' power to 'regulate Commerce with foreign Nations'"). It does not, however, extend exclusive federal authority to patrolling areas within the United States—near or far from the border.

Moreover, local police are authorized to enforce federal criminal laws, such as those against illegal border crossing and smuggling, in any area of Vermont. *State v. Towne*, 158 Vt. 607, 628-29, 615 A.2d 484, 496 (1992) (Vermont law "permits state officers to make arrests without a warrant where they have probable cause to believe that a federal felony is being or has been committed"). Although Vermont police cannot station themselves at the border or entry points, they are fully authorized to patrol areas near the border and make arrests for federal crimes. CBP even provides funding to police in border states, including Vermont, to "increase [local police] intelligence and operational capabilities to prevent, protect against, and respond to border security issues." FEMA Preparedness Grants Manual, April 2019, A-14, available at https://www.fema.gov/sites/default/files/2020-07/fema_preparedness-grants-

manual_2019.pdf; *see also* Vt. Dep't of Public Safety, Operation Stonegarden Grant Program (OSGP), https://hsu.vermont.gov/homeland-security-unit/funding-opportunities/OPSG (last visited Nov. 13, 2020). The law and facts above belie any notion that CBP acts "under [] exclusive authority" when patrolling within Vermont. A plain reading of *Coburn* and *Rennis* shows they do not control this case.

Similarly, even under *Coburn*'s interests test, Article 11 would apply here. The legal basis for *Coburn*, upon which *Rennis* relies, is that the federal government's interests are "preeminent" when federal officials act "under [] exclusive authority." *Coburn*, 165 Vt. at 325, 683 A.2d at 1347 (citing *State v. St. Francis*, 151 Vt. 384, 391, 563 A.2d 249, 253 (1989)).[7] *Coburn* recognizes the Foreign Commerce Clause's grant of exclusive federal jurisdiction over international entry of people and goods, precluding any Vermont interest. *Id*. (citing *Torres v. Puerto Rico*, 442 U.S. 465, 472-73 (1979)); *United States v. Ramsey*, 431 U.S. 606, 619 (1977) ("Searches of persons or packages at the national borders rest on . . . Congress['] broad, comprehensive powers to regulate Commerce with foreign Nations." (citation and internal quotation marks omitted)). But here, CBP searched Ms. Lena-Butterfield's car within Vermont, decidedly not an area subject to exclusive federal jurisdiction. *Coburn* and *Rennis* control only the fruits of CBP searches occurring *inside* areas of exclusive federal jurisdiction. The question presented here is whether Article 11 applies to the fruits of CBP searches occurring *outside* an area of exclusive federal authority. Because Vermont's interests in evidence found in its jurisdiction and introduced for prosecution in its courts outweigh the nonexistent federal interests, Article 11 should apply. *See* Appellants' Br. 33-34.

[7] As Amicus Attorney General notes, the interests test "was adopted from an entirely inapposite situation" involving questions of subject matter jurisdiction. AG Br. 10. "The question here is not about jurisdiction." *Id*.

Instead of recognizing this, Appellee relies on its incorrect assumption that CBP has exclusive authority to *act* anywhere to bolster its argument for a proximity-based test. Appellee's Br. 9. Yet again, this rule cannot be maintained because CBP only has exclusive authority when acting within exclusive federal jurisdiction—the border and functional equivalents. Proximity to the border is immaterial.[8] The relevant question is whether the search occurred at the border, in which case *Coburn* and *Rennis* apply, or not at the border, in which case they do not. Appellee admits it did not occur at the border or functional equivalent, but within Vermont. *See supra* p. 9 n.4. Appellants thus should be able to invoke their Article 11 rights. *See* Appellants' Br. 18-29.

III. Article 11 Requires Suppression of the Evidence in Appellants' Cases

A. Vermont Prosecutors Cannot Profit from Violations of Vermont Constitutional Rights

Appellee fundamentally misapprehends the purpose of and values underlying Article 11 and its exclusionary rule. As set out in Appellants' opening brief, the rights enshrined in Vermont's Declaration of Rights are personal to all Vermonters and are natural, inherent, and unalienable. Appellants' Br. 17-18, 22. Appellee, however, gives short shrift to the personal, inherent rights guaranteed by Article 11 and instead treats their violation as unworthy of judicial response in Vermont courts if the violation resulted from a separate sovereign's officer's conduct.

To make this argument, Appellee necessarily must mischaracterize the exclusionary rule as being primarily about deterring and punishing law enforcement

[8] As discussed in Part I, *supra*, any proximity test can only lead to absurd results.

officers. Appellee's Br. 17. *But see State v. Badger*, 141 Vt. 430, 452-53, 450 A.3d 336, 349 (1982). Appellee argues that this Court should not vindicate Appellants' Article 11 rights because doing so would not lead to fewer warrantless vehicle searches by CBP. Appellee's Br. 17. Even if that were true as a predictive matter, *but see* Appellants' Br. 28, while it may be a relevant argument in states whose exclusionary rule is narrowly focused on deterrence, *see id.* at 20-21, it is not so here, *id.* at 21-29. Article 11 is not concerned with deterring federal authorities; in fact, Vermont's exclusionary rule is not focused on deterring or punishing individual law enforcement officers at all: "The exclusionary rule's deterrent effect, however, does not rest primarily on 'penalizing' an individual officer into future conformity with the Constitution. Rather, it rests on its tendency to promote institutional compliance with Fourth Amendment requirements on the part of law enforcement agencies generally." *State v. Oakes*, 157 Vt. 171, 180, 598 A.2d 119, 125 (1991) (citation and internal quotation marks omitted). It thus seeks to "create an incentive for the police *as an institution* to train its officers to conform with the Constitution." *Id.* (emphasis added). A rule excluding from Vermont courts evidence obtained in violation of Vermont constitutional protections accomplishes exactly that. *See* Appellants' Br. 27-28.

Touching only briefly on the exclusionary rule's primary concerns, Appellee suggests that, once a federal officer has acted contrary to Article 11's protections, any interest in enforcing those protections in Vermont courts has disappeared. Appellee's Br. 18. Appellee thus argues that defendants have no privacy interest in suppression of this evidence gathered contrary to their personal, inherent rights; that it is fair for the State to profit from evidence seized in violation of the Vermont Constitution; and that the public's trust in Vermont's judicial system would be enhanced by admitting evidence

without regard for a defendant's state constitutional rights. *Id.* None of these arguments withstands scrutiny. Regardless of whether the police and prosecutor represent the same sovereign or not, suppression cannot and is not intended to undo the privacy violation—but it does and is intended to ensure that courts vindicate the value of the privacy right by preventing the State from profiting from its violation. *Badger*, 141 Vt. at 452-53, 450 A.2d at 349 ("Evidence obtained in violation of the Vermont Constitution . . . cannot be admitted at trial . . . . Introduction of such evidence eviscerates our most sacred rights . . . ."). The exclusionary rule also protects and preserves the defendant's dignitary interests, *see, e.g.*, *State v. Bryant*, 2008 VT 39, ¶ 36, 183 Vt. 355, 950 A.2d 467, interests that are invaded just as much by the initial privacy violation as by a subsequent conviction based on its fruits. And simply to pose the question of whether the public justifiably expects Vermont constitutional rights to be enforced in Vermont courts is to answer it.

B. Appellee's Proposed Balancing Analysis Is the Wrong Test for This Case, But, Even Under It, the Evidence Must Be Suppressed

Appellee argues that this Court should employ a balancing test to determine whether Article 11 permits the State to prosecute Appellants using evidence gathered by CBP agents in violation of Article 11's protections. Appellee's Br. 14-15. This Court has on occasion considered both privacy rights and public safety concerns in determining *how* Article 11 applies in particular circumstances. *See State v. Williams*, 2007 VT 85, 182 Vt. 578, 933 A.2d 239. *But see State v. Savva*, 159 Vt. 75, 85-86, 616 A.2d 774, 780 (1991) ("[A] warrant requirement is not a starting point for deriving exceptions that balance citizens' interest in privacy against law enforcement's interest in expeditious searches. Rather, it *is* the balance reached by the constitutional drafters, a balance in

which the individual's interest in privacy outweighs the burdens imposed on law enforcement, such that those subjected to searches must be protected by advance judicial approval." (citation and internal quotation marks omitted)). But, for all the reasons set out in Appellants' opening brief, Appellants' Br. 13-17, the exclusionary rule analysis is the appropriate framework for assessing the question of *whether* Article 11 is implicated at all when a separate sovereign's search is incompatible with the Vermont Constitution.[9] The distinction is significant: in the former scenario, the question is whether a defendant's Article 11 challenge will succeed; in the latter, it is whether the court will consider a defendant's Article 11 claims at all.

With respect to *how* Article 11 applies to vehicle searches, this Court has already completed its analysis: Article 11 does not permit a warrantless search of a vehicle or containers therein in Vermont's interior absent consent or probable cause plus exigent circumstances, and evidence gathered in violation of that prohibition must not be admitted in Vermont courts. *Savva*, 159 Vt. at 87-88; 616 A.2d at 780-81.

In any case, even if the Court were to adopt Appellee's proposed framework, the balance would tip sharply in favor of suppression. Appellants have described at length both their private interest in enforcement of their constitutional rights, Appellants' Br. 22-24, and the public interest both in protecting the integrity and fundamental fairness of the judicial process, and in incentivizing the institution of policing to train officers to comply with the Vermont Constitution, *id.* at 25-28. On the other side of the ledger,

[9] *Cf. State v. Lussier*, 171 Vt. 19, 30-33, 757 A.2d 1017, 1025-1027 (2000) (expressing skepticism about utility of, but nevertheless engaging in, cost-benefit analysis regarding whether exclusionary rule applies to civil license suspension proceedings, but basing ultimate conclusion on whether its application serves the purposes of the exclusionary rule: "[W]e conclude that it is appropriate to apply the exclusionary rule in civil license suspension proceedings to protect the core value of privacy embraced in Article 11, to promote the public's trust in the judicial system, and to assure that unlawful police conduct is not encouraged.").

Appellee gestures broadly to public interest in "the safety of the public" and the "activities of the Border Patrol in the immediate vicinity of the border." Appellee's Br. 19-20.

As to the first purported interest, every limitation on law enforcement's authority to search and seize implicates their ability to detect and solve crimes, and every suppression order implicates the State's ability to prosecute them. The fact that some crimes may go undetected, unsolved, or unpunished has never been a sufficient rationale, on its own, for voiding constitutional protections: "How often we hear the clamor of the moment that Article 11 is used as a barrier to effective law enforcement, and how often people forget that Article 11 is the balance struck between liberty for the individual (privacy and a sense of security) and the convenience of unchecked crime detection." *Savva*, 159 Vt. at 91-92, 616 A.2d at 783; *see also Lussier*, 171 Vt. at 33, 757 A.2d at 1027 ("This Court's enforcement of [constitutional] rights does no more disservice to law enforcement officers than the existence of the rights themselves."). Appellee's hyperbolic example, Appellee's Br. 19-20, amounts to an argument against suppression generally—the exclusionary rule, by design and in practical effect, keeps out of Vermont courts evidence of crime (no matter how serious) when that evidence was obtained contrary to Vermont constitutional rights. Appellee asks this Court to create an Article 11 workaround when a separate sovereign's officer performed the search—a dangerous proposition, for all the reasons detailed in Appellants' and Amici's briefs. Appellants' Br. 22-28; ODG Br. 16-26; AG Br. 7-8; MJ Br. 8-12. Appellee is correct that the results of this hypothetical search would be suppressed if there were a subsequent

state prosecution.[10] But that does not mean that federal agents could not share the information with State officials, nor does it mean the State would be barred from investigating further. It simply means that, as with an unconstitutional search performed by its own officers, the State could not obtain a search warrant relying on evidence gathered during that search and could not, absent an exception to the exclusionary rule, rely on it in court. *See, e.g.*, *State v. Birchard*, 2010 VT 57, ¶ 21, 188 Vt. 172, 5 A.3d 879 (explaining independent source and inevitable discovery doctrines). Appellee's quarrel is with the exclusionary rule itself.

As to the purported interest in CBP's activities, they will simply be unaffected. Nothing in Appellants' argument would prohibit: Border Patrol from engaging in its activities as permitted by federal law, such as conducting roving patrols and seizing contraband; the federal government from prosecuting federal crimes; or, to support prosecution in state court, federal agents from providing information to state officials, obtaining a warrant, or calling state officials to collaborate in searches in compliance with Article 11.

Notably, Appellee's balancing makes no mention of the public interest in Vermonters being able to avail themselves of the rights enshrined in their constitution, nor of the public interest in upholding Vermont's zealous protection of the warrant requirement.

> [W]hen the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent. Any other rule . . . would reduce the [right] to a nullity and leave us secure in our homes and persons only in the discretion of [law-enforcement] officers. Where, as here, the sole

[10] Under the facts described, this hypothetical individual has not committed any crime. *See State v. Sawyer*, 2018 VT 43, ¶ 14, 207 Vt. 636, 187 A.3d 377 ("[D]espite a showing of the intent to commit the offense, obtaining the tools necessary to complete an intended crime [does] not constitute an attempt to commit that crime.").

> justification for dispensing with the fundamental safeguard of personal liberty represented by the warrant requirement is law-enforcement efficiency, we have consistently ruled in favor of liberty. . . . [T]his seems a slight price to pay for the fundamental rights preserved by the Constitution.

State v. Bauder, 2007 VT 16, ¶ 37, 181 Vt. 392, 924 A.2d 38 (citations and internal quotation marks omitted).

Because Appellants' and the public's interests in enforcement of Vermont constitutional rights in Vermont courts are weighty, and because Appellee has identified no cognizable countervailing interest, an Article 11 balancing analysis would require suppression in this case.

CONCLUSION

For all of these reasons, this Court should reverse the decision denying Appellants' motion to suppress.

Dated: November 13, 2020

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief totals 4,327 words, excluding the table of contents, table of authorities, signature blocks, and this certificate as permitted by Vt. R. App. 32(a)(7)(C). I have relied upon the word processor used to produce this brief, Microsoft Word 2010, to calculate the word count.

I additionally certify that the electronic copy of this brief submitted to the Court via email was scanned for viruses, and that no viruses were detected.

Dated: November 13, 2020

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